



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,338	09/25/2003	Deborah T. Rodriguez	026-1-001	9685
51197 7590 BRIAN R. RAYVE 161 MAPLE DRIVE PARK CITY, UT 84098			EXAMINER JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/12/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/672,338

Applicant(s)

RODRIGUEZ, DEBORAH T.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 4,10,11,18 and 26-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,9,12-16 and 18-25 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Invention I, Species I in the reply filed on 20 June 2006 is acknowledged. Claims 4,10,11,17 and 26-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5,6,9,12-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Examiner Official Notice in view of:

Morganroth US 4,506,783 (multiple use hair dye kit with a stirring device in the form of a "spoon or the like" and gloves);

Sahl US 1,056,218 (carrying device having a drawstring);

Stanley, III US 6,440,175 (hair dye kit having a syringe);

Morganroth US 4,209,027 (stirring in the form of a plastic stirrer).

Art Unit: 3728

The Examiner takes Official Notice that hair dyeing is typically performed either with a single use kit, as are commonly found prepackaged in the hair care section of retail locations such as drug stores, or with a multiple use kit.

In single use kits, such as is disclosed in Goncalves US 5,209,565, herein set forth as extrinsic evidence, the manufacturer of the kit usually provides the contents of the kit in appropriately sized satchets so that the user easily mixes the proper amounts of hair dye constituents, thus ensuring that the hair color achieved will be as expected. Accordingly, in these single use kits there are typically little or no measuring steps that need to be performed. These single use hair dye kits also evidence that it is notoriously well known that hair dye components are assembled into a kit for the sake of convenience to the user.

Conversely, the Examiner takes Official Notice that for hair dye kits designed for *multiple* uses (such as is disclosed in the present application), the hair dye components are commonly measured into an appropriate amount and then mixed in a bowl. The background of Grollier et al. US 4,823,985 sets forth this evidence.

Grollier does not explicitly set forth in his background that in the commonly known situation where multiple use hair dye is utilized, the hair dye components (e.g. the implicitly set forth scale on which the dyes are weighed, the dyes, the bowl and the applicator brush) are assembled into a "kit."

Morgonroth, however, teaches that hair dye kits can be either of a single use form or a multiple use form, but in either case, a carrying device 18 is conveniently provided to store the kit. See col. 3, starting with line 15. Morgonroth further discloses

Art Unit: 3728

that the mixing can be performed with a stirring device in the form of a "spoon or the like", and that the kit should further include gloves.

Accordingly, from what is notoriously well known in the art (which is conveniently evidenced in the background of Grollier), and from what is additionally taught by Morgonroth, it can be seen that it would be obvious to one of ordinary skill in the art to provide multiple hair dye components of a measuring device such as a scale, the hair dye components (that are well known in this art to be packaged into tubes), a mixing bowl, a stirring device (in the form of a "spoon or the like"), and applicator brush, and a carrying device into an assembled kit for the purposes of convenience.

What is not notoriously well known in the hair dye art is:

that the carrying device be in the form of a drawstring bag;

the stirring device be in the form of a "stick"; and,

that the measuring device be in the form of a syringe.

Drawstring bags have been commonly used to assemble kits of many types for at least a hundred years because the design is well known in this art to be both easy to use inexpensive to manufacture, and the reference to Saul implicitly provides evidence of this. Despite the lack of evidence that such bags have been used for hair dye kits, it would have been obvious to one of ordinary skill in the art to use a drawstring bag such as is described by Saul in place of the can 18 of Morganroth so as to provide an easy to use and inexpensive container for the hair dye kit.

Art Unit: 3728

Morganroth US 4,209,027 in col. 7 line 12 discloses a stirring device in the form of a plastic stirrer, which is also commonly known as a stirrer stick.

Unquestionably, it would have been obvious to one of ordinary skill in the art to use a plastic stirrer stick as is known by Morganroth in place of the "spoon or the like" stirring device disclosed also by Morganroth.

Finally, with respect to the use of a syringe, the problem with measuring and transferring hair dye components is well known. The components may have volatile liquids in them, or they may be difficult to measure. Lorenz et al. US 4,294,293 in his background lines 15-55 describes the problems with this task, and Assini et al. US 5,554,197 devised a crude measuring device for hair dye components. Both of these references are set forth as extrinsic evidence.

Stanley, III is the ONLY reference that describes the use of syringes (and eye droppers) for use with hair dye (see col. 3, lines 5 and 6). And, Stanley uses the syringe as a transfer device. Stanley does not explicitly disclose that the syringe has graduations so as to measure the amount of hair dye. But, it is commonly known that to produce a proper hair dye result the proper amount of each hair dye component in the mixture must be used, and that the common (perhaps only) configuration of a syringe is one with graduations so that the syringe can also be used as a measuring device.

It is well known in this art and in other arts that the design of a syringe allows a single device to both measure and transfer an amount of material safely without the possibility of spillage.

Art Unit: 3728

Accordingly, it would have been obvious to replace the implicitly set forth scale (for weighing) of the Examiner Official Notice, and as is evidenced by Grollier, with a syringe as is taught by Stanley so as to allow the user to both measure and transfer a hair dye component simultaneously.

With respect to the prepackaging of the gloves, such configurations of gloves are notoriously well known, and the "prepacking" of the gloves as is claimed in no way defines in a patentable manner over what is notoriously well known in hair dye kits (and set forth by Examiner Official Notice and as is evidenced by Grollier) in view of what is disclosed by Morganroth and what is further notoriously well known in the art of cleaning gloves.

With respect to the cleaning brush, it is notoriously well known that hair dying is a process that requires a cleanup procedure, and that it is notoriously well known that cleaning brushes are the common devices used for such cleanup procedures. The configuration of cleaning brush claimed is also notoriously well known. The claims setting forth the inclusion of a cleaning brush do not in any way define over what is notoriously well known in hair dye kits (and set forth by Examiner Official Notice and as is evidenced by Grollier) in view of what is disclosed by Morganroth and what is further notoriously well known in the art of cleaning brushes.

Art Unit: 3728

With respect to the claimed configuration of application brush, again, this configuration of application brush is notoriously well known. The claims setting forth the particular configuration of application brush do not in any way define over what is notoriously well known in hair dye kits (and set forth by Examiner Official Notice and as is evidenced by Grollier) in view of what is disclosed by Morganroth and what is further notoriously well known in the art of hair dye brushes.

With respect to the number, material, and configuration (nesting) of mixing bowls, again, these claims do not define over what is commonly known in hair dye kits (and set forth by Examiner Official Notice and as is evidenced by Grollier) in view of what is disclosed by Morganroth and what is further notoriously well known in the art of mixing bowls.

Allowable Subject Matter

Claims 7 and 8 that are drawn to a particular configuration of a bottle stopper that has particular usage with a syringe are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3728

With respect to the claims drawn to the syringe, as has been set forth above, a single reference (Stanley) in the hair dye art describes the use of a syringe in a hair dye situation. However, this single reference negates the patentability sought with respect to the inclusion of a syringe in a hair dye kit, as the syringe, as is disclosed and claimed, is of the commonly known configuration.

However, the specific bottle stopper configuration, as is set forth in these two claims 7 and 8, and which is configured for use with a syringe, is not disclosed in the prior art of record. Nor would it be obvious to include such a stopper such as this in a hair dye kit it even if such a bottle stopper of this very specific configuration were uncovered in an art other than hair dye. Specifically, it would not in any way be reasonable to apply an obvious rejection to a specific configuration of bottle stopper that is designed for use with a syringe, when the use of syringes are so uncommonly used in hair dyeing procedures.

The bottle stopper as is set forth in the claims 7 and 8 is THE patentable inventive concept set forth in the present application. The remaining elements of the kit are all well known, or would be obvious inclusions in a hair dye kit, as has been set forth in the rejections above.

Conclusion

The following prior art is made of record: Miczewski et al US 6,835,018 discloses a carrying device 22 for multiple use hair dye kit.

Art Unit: 3728

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mickey Yu
Supervisory Patent Examiner
Group 3700